IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 27073 of 2004(W)

PETITIONER:

P.SREEDHARAN PILLAI,
CHARGE HAND, MECHANICAL ENGINEERING WORKSHOP,
PORT DEPARTMENT, NEENDAKARA PORT, KOLLAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT.N.SANTHA,
SRI.K.A.BALAN,
SRI.M.K.PRADEEPKUMAR.

RESPONDENTS:
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1. **STATE OF KERALA,**
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
CO-OPERATION AND PORTS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. **DIRECTOR OF PORTS, THIRUVANANTHAPURAM.**

BY ADV. SRI.V.A.MUHAMMED,
GOVERNMENT PLEADER SRI. BIJOY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007,ALONG WITH W.P.C NOS. 29082/2004 & 19744/2005 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.27073/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SELECT LIST WAS PUBLISHED AS PER NOTIFICATION NO. B1-2977/01 DTD. 28/12/2002 OF THE DEPUTY DIRECTOR OF PORTS IN FULL ADDITIONAL CHARGE OF DIRECTOR OF PORTS AND CONVENER OF D.P.C. (LOWER) IN THE KERALA GAZETE DTD. 29/03/2004.

EXT.P.2: COPY OF THE LETTER NO. B1-2977/2001 DTD. 20/11/2003 OF THE DIRECTOR OF PORTS ADDRESSED TO GOVERNMENT.

EXT.P.3: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE R.1. DTD. 22/06/2004.

EXT.P.4: COPY OF THE JUDGMENT IN W.P.(C). NO. 19166/2004-F DTD. 16/08/2004 OF THIS HONOURABLE COURT.

EXT.P.5: COPY OF THE REPRESENTATION DTD. 25/08/2004 SUBMITTED BY THE PETITIONER TO GOVERNMENT.

RESPONDENT'S ANNEXURE:

ANNEXURE R1: COPY OF THE G.O. (RT) NO. 423/04/F & PD DTD. 30/09/04.

//TRUE COPY//

prv.

ANTONY DOMINIC, J.
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W.P.(C) Nos.27073 & 29082 OF 2004
& 19744 OF 2005
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Dated this the 1st day of August, 2007

J U D G M E N T

The petitioners who were working as Draftsman Grade I and were promoted as Assistant Engineer (Mechanical), have filed WP(C)No.19744 of 2005 seeking a direction to respondents 1 and 2 to convene adhoc DPC for 2002 for promotion to the post of Assistant Engineer Mechanical/Head Draftsman in the above Department. They also seek a direction to respondents 1 and 2 to refrain from promoting the 3rd respondent as Assistant Executive Engineer in preference to them.

2. The facts of the case are that for year 2000-02, there were two vacancies in the category of Assistant Engineer (Mechanical) and in the DPC which was held in the year 2002 while candidates were considered and selected, the petitioners were not included in the select list. According

to them, it was based on certain uncommunicated adverse remarks that they were excluded, while on the other hand, the third respondent, who is stated to be junior to the petitioners, was included and was eventually promoted to the post of Assistant Engineer Mechanical w.e.f. 30/9/2004.

3. Invoking the statutory remedy under Rule 28 of the KS & SSR, they filed Exts. P6 and P7 representations before the Convenor of DPC. Pursuant to Ext.P8 judgment of this court, Government by Ext.P9 order directed the second respondent, the Convenor of DPC, to take necessary steps to convene an adhoc DPC for considering the claims of the petitioners as per the Rules. It is stated that in pursuance thereto, DPC was held for 2004, and they were selected and Ext.P10 is the select list. Accordingly their promotion was regularised w.e.f.2/12/2004.

4. In view of the promotion of the petitioners as

stated above, though substantial reliefs have been sought in the writ petition, what remains is, refixation of their seniority with retrospective effect provided petitioners are found to be entitled to relief in this writ petition.

5. Going by the pleadings, this is a case where the essential complaint of the petitioners is that they were excluded from the DPC held for 2002 despite their eligibility. The only ground was that there were certain adverse remarks in their confidential reports. According to them, these were not communicated to them and therefore, it ought not have formed basis for their exclusion and hence their exclusion from the select list is illegal. It is on this basis they claim that they ought to be directed to be considered for promotion with effect from 2002.

6. Since it is a fact that there are adverse entires in the confidential reports of the petitioners, I am not prepared

to straight away direct that the petitioners should be considered and promoted against the vacancies of 2002. That will amount to rewarding the petitioners despite the adverse entires in the confidential report. It was only due to a technical lapse of the respondents that these adverse remarks were not communicated. In view of that the respondents are directed to communicate the adverse entries in the confidential reports of the petitioners for the relevant time and enable the petitioners to represent against that adverse entries and on that basis the DPC be constituted and the petitioners be considered. If the petitioners are found fit to be promoted with retrospective effect, then consequential orders shall be passed giving effect to their promotions with retrospective effect. Accordingly this writ petition is disposed of directing the respondents to communicate the adverse entries in the

confidential reports of the petitioners for the period relevant for the DPC of 2002 and permit the petitioners to represent against them and thereafter consider the cases for promotion in accordance with the rules. I also make it clear that if the adverse remarks are remedial in nature, respondents can adopt the course provided in Rule 28(b)(i)(4) of the K.S & S.S.R. With these directions, WPC NO.19744 of 2005 will stand disposed of.

7. As far as WP(C) No.29082/04 is concerned, the petitioners seek to quash Ext.P10 whereby the 3rd respondent has been promoted as Assistant Engineer w.e.f. 30/9/04. In view of the directions in WPC No.19744/05, I do not consider it necessary to go into the merits of the contentions nor I am in a position to grant relief sought for.

8. In so far as WPC No.27073/2004 is concerned, it is filed by the 3rd respondent in the other two writ petitions.

According to him he was considered by the 2002 DPC but has been promoted only w.e.f. 30/9/2004. The validity of his claim depends on the findings to be rendered in pursuance to the judgment in WP(C) No.19744/05 and therefore subject to the review as directed above, the claim of the petitioner raised in WP(C) No.27073/2004 is left open.

With these directions, writ petitions are disposed of.

ANTONY DOMINIC, JUDGE.

Rp